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SERVICE DATE - SEPTEMBER 2, 1998

SURFACE TRANSPORTATION BOARD¹

CERTIFICATE AND DECISION

Docket No. AB-3 (Sub-No. 131)

MISSOURI PACIFIC RAILROAD COMPANY--ABANDONMENT--HOPE-
BRIDGEPORT LINE IN DICKINSON AND SALINE COUNTIES, KS

Docket No. AB-8 (Sub-No. 37)²

THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY--
DISCONTINUANCE OF TRACKAGE RIGHTS--HOPE-BRIDGEPORT LINE IN
DICKINSON AND SALINE COUNTIES, KS

Decided: August 31, 1998

Missouri Pacific Railroad Company (MPRR) filed an application under 49 CFR 1152.22 for it to abandon, and for the Denver and Rio Grande Western Railroad Company to discontinue its overhead trackage rights on, a line of railroad extending from milepost 459.20, near Hope, to milepost 491.20, near Bridgeport, a distance of approximately 31.24 miles (milepost 478.05 = milepost 478.81) in Dickinson and Saline Counties, KS. The abandonment was authorized as part of the Board's Decision No. 44 in UP/SP, which was served on August 12, 1996. See the Federal Register of August 12, 1996 (61 FR 41823).

¹ The ICC Termination Act of 1996, Pub. L. No. 104-88, 109 Stat. 803 (ICCTA), enacted on December 29, 1995, and effective on January 1, 1996, abolished the Interstate Commerce Commission (ICC) and transferred certain functions and proceedings to the Surface Transportation Board (Board). Section 204(b)(1) of the ICCTA provides, in general, that proceedings pending before the ICC on the effective date of that legislation shall be decided under the law in effect prior to January 1, 1996, insofar as they involve functions retained by the ICCTA. This decision relates to a proceeding that was pending with the ICC prior to January 1, 1996, and functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 10903. Accordingly, this decision applies the law in effect prior to the ICCTA, and citations in this decision are to the former sections of the statute and regulations.

² These proceedings are related to Finance Docket No. 32760, Union Pacific Corporation, Union Pacific Railroad Company, and Missouri Pacific Railroad Company--Control and Merger--Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and The Denver and Rio Grande Western Railroad Company (UP/SP).

On September 10, 1996, a decision and certificate of interim trail use or abandonment (CITU) was served authorizing a 180-day period for parties interested in trail use to negotiate an interim trail use/rail banking agreement with MPRR for the entire Hope-Bridgeport line. Extensions of the negotiating period were granted by decisions served on February 10, 1997, January 26, 1998, and August 5, 1998.³ The negotiation period under the latest extension is scheduled to expire on August 8, 1999.

On August 24, 1998, UPRR filed a letter stating that it had requested the latest extension of the CITU because it expected to finalize a donation of the right-of-way to an organization called the Kansas Horseman Foundation (KHF). UPRR states that KHF will be unable to acquire the property due to strong local opposition and other reasons. UPRR also states that it had contacted Saline County (County) to determine if the County had an interest in acquiring the right-of-way and reports that the County has expressed no interest in acquiring the line for trail use.⁴ UPRR further states that it is no longer willing to negotiate interim trail use because there is no realistic prospect of a trail transaction and requests that the Board issue a certificate permitting the line to be fully abandoned, effective immediately. Because the parties are unable to reach an interim trail use and UPRR indicates that it is not willing to negotiate trail use on the right-of-way, an appropriate certificate and decision will be issued.

It is certified: The present and future public convenience and necessity permit the abandonment and discontinuance of service over the described line of railroad, subject to (a) the employee protective conditions in Oregon Short Line R. Co. - Abandonment - Goshen, 360 I.C.C. 91 (1979) and (b) the 14 general mitigation conditions specified in Appendix G of the August 12 decision.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. The CITU served on September 10, 1996, is vacated.
3. The railroad may cancel any tariff relating to service over this segment of line on not less than 10 days' notice. Any cancellation of tariffs must refer to this certificate and decision by date and docket number.

³ MPRR merged into Union Pacific Railroad Company (UPRR) on January 1, 1997. By letter filed November 12, 1997, UPRR notified the Board that service had been discontinued on the line as authorized in the CITU served on September 10, 1996.

⁴ The County filed a letter with the Board on August 18, 1998, essentially confirming that it has no interest in acquiring the right-of-way for interim trail use.

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4. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary